UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ERIC GLATT, et al.,

Plaintiffs,

v. 11 Civ. 6784 (WHP)

FOX SEARCHLIGHT PICTURES INC.,

Conference

Defendant.

----------x

New York, N.Y.
August 24, 2012
10:00 a.m.

Before:

HON. WILLIAM H. PAULEY III

District Judge

APPEARANCES

OUTTEN & GOLDEN LLP
Attorneys for Plaintiffs
BY: ELIZABETH H. WAGONER
RACHEL M. BIEN

PROSKAUER ROSE LLP
Attorneys no Defendant
BY: ELISE M. BLOOM
AMY F. MELICAN

(Case called)

THE COURT: Good morning.

We have two matters on, a discovery dispute and a motion to amend. Let's deal with the discovery issue first. I have reviewed the parties' papers. Does either side wish to be heard? Ms. Bien?

MS. BIEN: Thank you, your Honor. The issue, as your Honor is aware, is a communication that was sent to former interns at Fox Searchlight. According to the submission from defendants' counsel, at least some of the information that was conveyed to those interns does raise some concerns for us about whether it may have a chilling effect on individuals' willingness to participate in the lawsuit. We have also communicated with some of the interns who shared that same feeling with us.

At this point, without seeing the letter or the email, we really are not in a position to determine what, if any, further steps should be taken. What we would ask is that defendants produce the email.

A separate issue is that the Court had ordered earlier this summer that the defendants produce contact information for interns. One of the issues that arose was that defendants did not maintain centralized contact information for all interns, in particular, email addresses.

However, it appears that if an email was sent out to a

good number of former interns, then defendants may have compiled a list of email addresses. We had asked that at least that compilation be produced to us so that we could make efforts to communicate with potential class members.

That is the discovery dispute as we see it.

THE COURT: On your coercion point, how can there be a risk of coercion if the email only reached former interns?

MS. BIEN: I think the risk is not just limited to current employees. The risk is that there could be communications, potentially misrepresentations, about the lawsuit or positions that defendants have taken in the lawsuit that may not be neutral communications, that may prevent people from responding to our communications, be willing to participate in any way, or maybe be concerned about joining the lawsuit and protecting their rights.

Your Honor, at this point we don't know yet whether there is any problem with the communication. I think we are in the dark a bit. But I do have some concerns about what defendants wrote in their letter. In particular, they said that the email address concerns that they had raised to the Court included their position that we may be getting in contact with those interns in order to, quote, drum up participants for this action. That's what they wrote in their letter.

I think that kind of language isn't the sort of neutral communication that would likely be permissible and

would not require any further steps. But having not seen the email itself, I don't know if that is the case.

THE COURT: Let me hear from Ms. Bloom.

MS. BLOOM: Thank you, your Honor. The email was sent in June of this year. It's our position that it wasn't coercive. We are prepared actually to give the Court a copy of it so that the Court could make its own independent determination as to whether or not it felt it was coercive.

By way of background, as you may remember, we had a concern the last time that we were here because since this case was filed in September of 2001, there has been a steady stream of publicity in the press. Ms. Wagoner was on YouTube. Then there was a very aggressive outreach to potential plaintiffs in the case. I think we had provided you with a copy of some of the out links through Linked-In.

We were getting questions from people about the case. In one instance I guess Ms. Bien had contacted somebody and they didn't want to participate, and then they got a phonecall from somebody else from the firm. So there was a lot of confusion.

In June we did -- not me, but our client did send out an email communication. I do want to correct one thing that Ms. Bien said. It went to former interns, except I have gone back and looked, and of the former interns, there are two that do currently work for Searchlight. So you should know that.

Since we sent out the email, I think they got two people who have said they are interested in being involved in the lawsuit. It's unclear to what extent. The media campaign has continued, in fact intensified of late. It is our position that there was nothing coercive about.

The other thing I had wanted to put out is we had asked the plaintiffs' attorneys -- remember we had had this issue about contact information? They had said that they wanted the contact information in order to do their investigation. We had expressed a concern about trying to potentially solicit class members. They prevailed in that and they were given the contact information.

We then asked for copies of communications, and they resisted giving us copies of the communications that they sent out. We hadn't raised that issue with the Court yet. We didn't think it was ripe, because, as you saw in our letter, there was a whole host of other things. They indicated they might be withdrawing part of the case.

In any event, if you order us to turn over our email, we would ask that they similarly be ordered to turn over all of their communications. We have a similar concern that they may be going a little bit further than that which we would normally think would rise to the level of solicitation.

THE COURT: As you have noted, that is really not properly before me. That was sort of a drive-by footnote in

your letter.

I've reviewed the matter. I think, quite frankly, it's emblematic of the litigiousness of the parties in this case. I'm going to rule on it right now.

Plaintiffs in this Fair Labor Standards Act case seek production of a July or perhaps June 2012 email that Fox Searchlight Pictures, Inc. sent to its interns discussing this lawsuit. According to plaintiffs, production of the email will provide them with intern contact information that they do not currently possess. Further, plaintiffs maintain that inspection of the email is necessary so that they can determine whether the email poses a risk of coercion. See EEOC v. Morgan Stanley & Co., 206 F.Supp.2d 559 at 562 (S.D.N.Y. 2002).

This Court has already determined that plaintiffs are entitled to contact information of putative class members. See Glatt v. Fox Searchlight, Inc., No. 11 Civ. 6784 (WHP) 2012 WL 2108220 at *2 (S.D.N.Y. June 11, 2012). And Searchlight acknowledges that it does not maintain a database of corporate interns email addresses.

Thus, Searchlight's July email to interns will likely provide plaintiffs with new contact information to which they are entitled. Moreover, without examining the July email, plaintiff cannot determine whether to seek this Court's intervention to mitigate any risk of coercion. Accordingly, Searchlight is directed to produce the July email to plaintiffs

forthwith.

For its part, as alluded to here, Searchlight requests that this Court order plaintiffs to produce their communications with putative class members. But this looming discovery dispute was raised only fleetingly at the end of Searchlight's August 2 letter to the Court, and it's not properly before the Court at this time. To the extent that Searchlight seeks this Court's intervention, the parties should follow this Court's individual rules, something they did not do in connection with this application.

I could have just bounced it all back to you, and I will bounce them back to you from now on. You know exactly what my individual practices require: A joint letter. In the future no joint letter, no decision, and no extension on discovery, because it will be a delay that you will just be causing to yourselves by not following the rules. A cautionary note to both sides.

This constitutes the ruling of the Court with respect to the July email. I'll enter a short order on the docket reflecting it.

Now let's turn to the other issue, which is the plaintiffs' motion to amend. Typically, I think that motions to amend, especially when discovery isn't even closed, are just an unnecessary exercise. And obviously it would warrant some extension of discovery. If the parties can't work it out, I'm

going to tee up an accelerated briefing schedule on the motion to amend. I'm going to live in hope that you could work it out after this conference, but in the event that you can't, when can the plaintiffs file their motion?

MS. BIEN: Your Honor, I would ask for ten days.

THE COURT: All right. File your motion on September 5.

When do you want to oppose the motion?

MS. BLOOM: 14 days later.

THE COURT: File your opposition on the 19th. Any reply by the 25th. I'll put the case on for argument at 5 o'clock on October 2. But maybe you will take a few minutes to resolve this issue and save us all some trouble.

Anything further?

MS. BIEN: Your Honor, there is a briefing schedule currently set in the case management plan for the class and collective certification motion based on the former complaint. It overlaps with this current briefing schedule. How would your Honor like us to address that?

THE COURT: Until I resolve the question of this amendment, it's hard to tee up the certification, right?

MS. BIEN: I agree, your Honor.

THE COURT: It was the defendant who said they didn't want to have any delay, but now we'll have a delay unless there is an agreement. I'll probably decide that motion to amend

right from the bench.

Anything else?

MS. BLOOM: I have a question about the October 2nd date. Is there any opportunity to do that later that week? I'm supposed to be out of town on the 1st and the 2nd.

THE COURT: October 3, will that work, Ms. Bloom?

MS. BLOOM: If not, just leave it, and I'll change my plans.

THE COURT: Did you say the 3rd works or not?

MS. BLOOM: No. If it were possible to do it Friday?

THE COURT: All right, I'll put it on on October 9 at 5 o'clock. I've got a murder trial going starting on October 1.

MS. BLOOM: I'm sorry, your Honor.

THE COURT: There will be no need to apologize if you just work this out. Read 15(a). Amendments are liberally granted. The federal rules rarely used adverbs.

Anything else?

MS. BIEN: Not from us, your Honor.

MS. BLOOM: Not from us.

THE COURT: I've used all the coercion I can use. Have a good weekend.

(Adjourned)